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In re Application of
FENG, Zixia et al.
Application No.: 10/525,410
PCT No.: PCT/US02/39316
Int. Filing Date: 09 December 2002
Priority Date: 20 December 2001
Docket No.: 2345F USA
For: NOVEL ... TREATMENT OF
GLAUCOMA

DECISION

ON PETITION UNDER

37 CFR 1.10(e)

This decision is in response to applicant's "Petition Under 37 CFR 1.10," filed in the United States Patent and Trademark Office on 26 January 2005. No petition fee is required.

BACKGROUND

On 09 December 2002, applicant filed international application PCT/US02/39316, claiming a priority date of 20 December 2001. The deadline for entry into the national stage in the United States was 21 June 2004 (20 June 2004 was a Sunday).

On 26 January 2005, applicant filed a petition under 37 CFR 1.10, accompanied by a transmittal letter, a copy of an express mail label and a declaration.

DISCUSSION

37 CFR 1.10(e) states:

(e) Any person mailing correspondence addressed as set out in §1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if

the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day, and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

Items (1) and (4) have been satisfied. The petition was filed promptly. Applicant states that the papers are a true copy of the earlier submission.

As to item (2), a review of the correspondence does not reveal the Express Mail mailing label number. See MPEP 513, III. "Express Mail" Mailing Label Number. Applicant indicates that the Express Mail mailing label number was on the postcard, but the postcard does not constitute correspondence filed with the Office.

As to item (3), applicant has provided what applicant claims to have submitted, along with an Express Mail log and corporate mail account records, but the original correspondence is not marked with the Express Mail mailing label number, and is not tied to the label that applicant has provided.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.10(e) is DISMISSED without prejudice.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(e)."

The application is ABANDONED.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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